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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE:

SRC 05 150 55036

Office: TEXAS SERVICE CENTER

Date:

SEP 06 2006

IN RE:

Petitioner:

Beneficiary:



PETITION: Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Mari Johnson

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

Part 1 of the Form I-360 petition identifies the alien beneficiary as the petitioning individual, and [REDACTED] (hereafter [REDACTED] as the petitioning organization. Review of the petition form indicates that the alien beneficiary, not [REDACTED] is the petitioner. An applicant or petitioner must sign his or her application or petition. 8 C.F.R. § 103.2(a)(2). In this instance, Part 9 of the Form I-360, "Signature," has been signed not by any official of [REDACTED] but by the alien beneficiary himself. Thus, the alien, and not Mt. [REDACTED] has taken responsibility for the content of the petition. This will have no effect on the disposition of the appeal, because an attorney who represents both [REDACTED] and the beneficiary filed the appeal, and therefore the appeal was properly filed.

The petitioner seeks classification as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), to perform services as a pastor at [REDACTED]. The director determined that the petitioner had not established that he had the requisite two years of continuous work experience as a minister immediately preceding the filing date of the petition. In addition, the director determined that the petitioner had not established that his position is full-time.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C), which pertains to an immigrant who:

(i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

(ii) seeks to enter the United States--

(I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

(II) before October 1, 2008, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

(III) before October 1, 2008, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986) at the request of the organization in a religious vocation or occupation; and

(iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The first issue concerns the petitioner's past experience. The regulation at 8 C.F.R. § 204.5(m)(1) indicates that the "religious workers must have been performing the vocation, professional work, or other work continuously

(either abroad or in the United States) for at least the two-year period immediately preceding the filing of the petition.” 8 C.F.R. § 204.5(m)(3)(ii)(A) requires the petitioner to demonstrate that, immediately prior to the filing of the petition, the alien has the required two years of experience in the religious vocation, professional religious work, or other religious work. The petition was filed on May 4, 2005. Therefore, the petitioner must establish that he was continuously performing the duties of a minister throughout the two years immediately prior to that date.

The regulation at 8 C.F.R. § 204.5(m)(2) defines “minister” as an individual duly authorized by a recognized religious denomination to conduct religious worship and to perform other duties usually performed by authorized members of the clergy of that religion. In all cases, there must be a reasonable connection between the activities performed and the religious calling of the minister. The term does not include a lay preacher not authorized to perform such duties.

The petitioner’s initial submission includes Form G-325A, Biographic Information, in which the petitioner claims the following experience during the relevant two-year period:

[REDACTED]	chaplain	Sep. 2002-Aug. 2003
	homeless ministry	Nov. 2003-Jan. 2004
	minister	Jan. 2004-present time

The same initial submission also includes a copy of the petitioner’s résumé, which lists the following employment:

[REDACTED]	Resident Chaplain	2002-2003
	Assistant Counselor	Sep. 2003-Dec. 2003
	Local Pastor	2004-Present

We note the inconsistent dates for the petitioner’s service at Memorial Assistance Ministries (MAM). The petitioner claims that his position as an assistant counselor involved the following duties:

- Help organize and manage resources in the Assistance shop
- Plan for the Clients who come for Assistance to meet with counselors (Most of these were homeless who came to seek help in the ministry)
- Helping in identifying the needs of clients
- Helping in keeping the Pantry/other supplies up to date.

On July 9, 2005, the director issued a notice of intent to deny (NOID), stating that the petitioner’s employment as an assistant counselor interrupted the continuity of his work as a minister. The director requested additional evidence regarding the petitioner’s duties and compensation during the qualifying period.

In response, counsel states:

At Methodist Hospital, . . . [the petitioner's] duties included visiting the sick, meeting with family members and providing spiritual guidance and support. At Memorial Assistance Ministries, [the petitioner] assisted needy persons in obtaining the Ministries' services. His role as **Assistant Counselor** was to identify client needs and financial resources so that this church ministry could assist them. . . .

[The petitioner's] position as "Assistant Counselor" . . . was clearly within the realm of his work as a minister and . . . he did not lose his status as a minister by virtue of working at the Memorial Assistance Ministries. . . . His work in the Ministries program was pastoral in nature, not secular.

Counsel repeats this basic argument on appeal, and we shall discuss it in that context. Regarding the petitioner's dates of employment, counsel provides the following chronology:

From September 3, 2002 until July 31, 2003, he worked as a Chaplain Resident at the Methodist Hospital. . . . From October 7, 2003, to December 23, 2003, he worked at Memorial Assistance Ministries . . . as an assistant to the manager of the Emergency Services program. . . . From January 1, 2004, until the present, [the petitioner] has worked at the [redacted] and [redacted] United Methodist Churches as a minister and pastor.

Employment letters and payroll documents in the record corroborate the above dates. The newly corrected dates show a gap of more than two months between the end of the petitioner's assignment at Methodist Hospital and the beginning of his work at MAM. [redacted], president of MAM's board of directors, states that the petitioner "was employed full time in our Resale Shop . . . working with clients and in various jobs assisting the manager of our Emergency Services operation." A brochure from MAM describes the Resale Shop as "a low-cost place to buy clothing, furniture, and household items."

[redacted], pastor of Fair Haven United Methodist Church, claims: "During the months between his service at Methodist Hospital and his new pastorate, [the petitioner] served as a pastor-in-residence at Fair Haven." Pastor [redacted] asserts that this period lasted from "July, 2003 to January, 2004." The petitioner himself had not previously claimed to have worked at Fair Haven, either on his Form G-325A or on his résumé, and the petitioner's tax documents do not reflect any income from Fair Haven. Therefore, the record offers no evidence that the petitioner held a full-time, compensated position as a pastor-in-residence at Fair Haven United Methodist Church. Part-time volunteer work is not continuous ministerial work for immigration purposes. *See Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980).

To show compensation for his work, the petitioner submits copies of his income tax return from 2003, and of Form W-2 Wage and Tax Statements from the same year, showing that MAM paid the petitioner \$2,346.30 and Methodist Hospital paid him \$13,128.68. The petitioner claims that Mt. Vernon "does not deduct income taxes or Social Security from my pay because the treasurer explained to me that I did not make enough income to incur tax liability. . . . I did not file an income tax return for the tax year 2004 because it was my understanding that, with the size of my family, I did not make enough income to pay taxes." The record contains copies of pay stubs from Methodist Hospital, but no comparable documentary evidence from Mt.

A “Net Cash Flow” statement from [REDACTED] purports to summarize [REDACTED] finances through the first eight months of 2004, but the record contains no first-hand evidence to verify the accuracy of the figures on this statement. The petitioner also submits a statement from [REDACTED] the treasurer of Mt. [REDACTED] but Ms. [REDACTED] does not corroborate the petitioner’s assertions about what Ms. [REDACTED] purportedly told him. She does not mention the petitioner’s compensation at all; she simply attests to the authenticity of a copy of the church budget contained in the record.

The director denied the petition, in part because the petitioner had not shown that he worked continuously as a minister throughout the two-year qualifying period. The director determined that the petitioner did not carry on the vocation of a minister while working at MAM in 2003, and that the petitioner failed to show that he was compensated for his work at [REDACTED]

On appeal, counsel once again asserts that the petitioner’s “work at Memorial Assistance Ministries was pastoral and religious in nature, and not secular.” Counsel cites a new letter from Pastor [REDACTED] who states:

During his time at Fair Haven [the petitioner] worked in several ministerial related areas including visitation and teaching. It was also my privilege to arrange the Christian counselor work at MAM. . . . MAM is always in need of seminary trained individuals to work as Christian counselors. [The petitioner] was particularly prepared for such work because of his, then recent, work in Clinical Pastoral Education at Houston’s Methodist Hospital. . . .

Everything done at MAM is motivated by Christian charity. Those who come receive a variety of services. [The petitioner’s] assigned title was that of “counselor.” A Christian based counselor spends time sharing faith with people who have specific needs for encouragement and hope. His title would involve more than just a “counselor” in the secular understanding. He would be more called a “Christian counselor,” one who uses all the tools and training received through seminary education in order to help people at the center of the spiritual and temporal needs.

The issue here does not reduce simply to “religious” versus “secular” work. Not all religious work is the work of a minister. An individual in a religious occupation is not performing duties reserved for the clergy. The petitioner must establish not only that his work as an assistant counselor is religious in nature, but also that this work is inherently the work of a minister. Work that could be performed by a layperson does not become ministerial simply because a minister happens to be the one performing the work on that occasion.

We revisit, here, the petitioner’s own original description of his duties at MAM:

- Help organize and manage resources in the Assistance shop
- Plan for the Clients who come for Assistance to meet with counselors (Most of these were homeless who came to seek help in the ministry)
- Helping in identifying the needs of clients
- Helping in keeping the Pantry/other supplies up to date.

This early listing of the petitioner's duties appears to have more to do with the logistics of operating a retail store than with the traditional functions of the clergy. Nevertheless, [REDACTED] letter does not mention any of the above functions.

The MAM brochure that the petitioner had submitted describes the Resale Shop, and identifies "Emergency Services" such as providing "food, clothes and gifts" to "needy families" during the Christmas season. The only mention of "counseling" in the MAM brochure relates to vocational counseling as part of the "Job Bank" program. The brochure describes several ways in which MAM meets the short-term material needs of needy individuals and families, and states that MAM has "a mission of providing emergency assistance to the less fortunate," but there is no indication that MAM provides religious counseling. No one in this proceeding claimed that the petitioner was primarily a religious counselor at MAM until after the director expressed doubt regarding the petitioner's eligibility. The petitioner, on appeal, offers no explanation for this obvious shift in the description of his duties and of the fundamental purpose of MAM.

Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 586, 592 (BIA 1988).

We find that the petitioner has not credibly demonstrated that he performed the duties of a minister between July 31, 2003 and January 1, 2004. The petitioner was, apparently, unemployed (rather than on a scheduled vacation from a job he continued to hold) for more than two months during that five-month period.

Regarding the petitioner's compensation at [REDACTED] the petitioner submits copies of several pay stubs and canceled checks, but does not explain why this evidence was not submitted previously. The checks show that [REDACTED] paid the petitioner \$650.00 twice a month since January 2004. This amount annualizes to \$15,600, which matches the "Pastors stipend" shown in the church's budget. We shall revisit the issue of the petitioner's compensation at [REDACTED]

We turn, now, to the issue of the petitioner's work schedule. The director has cited by *Matter of Faith Assembly Church*, 19 I&N 391, 393 (Comm. 1986) and *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980) to support the finding that the petitioner's past and future work must be full-time. A copy of the June 2005 edition of *The Good News*, a local religious newsletter, identifies the petitioner as pastor of Mt. Vernon, and provides the following "Weekly Schedule":

- Sunday School.....9:30 a.m.
- Sunday Worship..... 11:00 a.m.
- Praise & Prayer (WED).....7:00 p.m.
- Bible Study (WED)..... 7:30 p.m.
- Sanct. Choir Rehearsal (SAT).....3:00 p.m.
- Children Choir Rehearsal (2/SAT).....3:00 p.m.

The petitioner submits a letter from [REDACTED] superintendent of the Houston Southwest District of the Texas Annual Conference of the United Methodist Church, who states that the petitioner “works the 40 hours a week that would be standard full time employment within the United States.” [REDACTED] adds: “On June 1, 2005, the Ebenezer United Methodist Church in Fresno, Texas, was added to his pastoral responsibilities” while the petitioner continues to serve as pastor of Mt. Vernon. [REDACTED] states that the petitioner “is paid \$15,600 a year by the [REDACTED] United Methodist Church and \$2,400 per year by the Ebenezer United Methodist Church. He lives in a church owned parsonage so that the housing needs of his family are provided by the church as are health benefits.”

In denying the petition, the director stated:

The letter signed by [REDACTED], dated August 1, 2005 clearly states that the beneficiary has been working forty (40) hours a week, but the weekly schedule provided by the “Good News” for the month of June 2005 clearly indicates that the beneficiary only works three days out of the week. The evidence consists solely of the unsubstantiated statements of the petitioner, statements that have been shown to be unreliable, having been contradicted by the affiants’ own prior declarations.

The director cited *Matter of Faith Assembly Church*, 19 I&N 391, 393 (Comm. 1986), which indicates that part-time employment as a minister cannot satisfy the two-year continuous experience requirement.

On appeal, counsel states that the “Weekly Schedule” from *The Good News* is “a list of worship services provided for the edification of the faithful,” rather than “the sole and exclusive indicator of the beneficiary’s ministry.” We concur, from the context of the publication, that the “Weekly Schedule” relates to the church, rather than to the petitioner’s working hours as pastor. We note that church documents do not indicate that the pastor is responsible for choir rehearsals; [REDACTED] employs a part-time musician for that purpose. Therefore, the weekly schedule is not a comprehensive listing of the petitioner’s work schedule. This finding, however, does not compel a finding that the petitioner has credibly and consistently established that the petitioner works, and has worked, continuously and full-time.

The petitioner submits a letter from [REDACTED] lay leader of [REDACTED]’s board of trustees. Mr. [REDACTED] states that the petitioner “works for more than 40 hours,” including “additional hours” beyond those “regularly scheduled.” This is consistent with [REDACTED]’s earlier assertion that the beneficiary works “40 hours a week.” Nevertheless, the record contains other documents that cast doubt on these claims.

The petitioner’s initial submission includes photocopied excerpts from the *2004 Journal* of the Texas Annual Conference, showing the petitioner’s name and the “Status” code “PL.” Subsequently, the petitioner has submitted photocopied excerpts from *CrossConnection*, which also lists the petitioner’s name with the “Status” code “PL.”

Review of conference materials shows that “PL” stands for “Part Time Local Pastor.” The *2004 Journal* and *CrossConnection* listings show that the Texas Annual Conference of the United Methodist Church has

repeatedly identified the petitioner as a part-time pastor in its official publications. Unlike the witness letters in the record, these publications were not prepared for the express purpose of assisting the petitioner to obtain immigration benefits.

On August 9, 2006, the AAO notified the petitioner, pursuant to 8 C.F.R. § 103.2(b)(16)(i), of the AAO's intent to dismiss the appeal based, in part, on the above information. The AAO's notice read, in part:

Page H-12 of an official document of the Texas Annual Conference at http://www.gbgu-umc.org/longview/2005_Appointments_XFBXCSGS.pdf (accessed July 28, 2006) shows your name and the "PL" status code, just like page H-12 of the 2004 Report excerpt submitted with your petition. Page H-1 of this same official document includes a key explaining the status codes. The code "PL," shown with your name on several official church documents, stands for "Part time Local Pastor."

Chapter 13 of the *Board of Ordained Ministry Handbook*, published by the United Methodist Church General Board of Higher Education and Ministry and available online at <http://www.gbhem.org/bomhandbook/> (accessed August 2, 2006), states: "Part-Time Local Pastors . . . do not devote their entire time to the charge to which they are appointed" and receive less compensation than full-time local pastors. This published information indicates that the Texas Annual Conference of the United Methodist Church considered you to be a part-time pastor in both 2004 and 2005. This information directly contradicts the claim in your petition that you are, and have been, a full time pastor of the United Methodist Church.

In response to this notice, counsel states: "We are grateful that the Service Center's concerns that [the petitioner] had not met the two-year requirement appear to have been resolved in his favor." The AAO had not stated or implied as much in its notice of August 9, 2006. The notice served only to inform the petitioner of an additional issue that had surfaced; there was no indication that the AAO considered the other matters to be resolved.

The petitioner submits a new letter from [REDACTED] superintendent of the Southwest District of the United Methodist Church Texas Annual Conference. This letter discusses the petitioner's duties, but does not address the central question of whether the petitioner works full-time.

The petitioner also submits a telefax copy of a letter from [REDACTED] resident bishop of the Texas Annual Conference. [REDACTED] states:

Local pastors are divided into full-time and part-time categories. Although the language seems to designate the amount of hours pastors spent in their employment, in this case it is related to their salaries. There is a minimum salary for full-time local pastors. . . . The minimum salary for full-time local pastor in 2006 is \$31,483. Any local pastor who makes less than that is considered to be a part-time local pastor. [The petitioner] earns \$18,300 in base salary plus a parsonage.

Many of our local churches are unable to support pastors at that minimum salary level. . . . In most cases, our part-time local pastors work far more hours than those for which they are actually paid. Their work load would indicate full-time, but their salary levels require that we designate them as part-time per our conference rules.

never specifically states that the petitioner is among the full-time ministers who are designated “part-time” only because they are underpaid. Thus, has at best set forth a possible explanation for the petitioner’s “PL” designation (another possible explanation being that the petitioner is, in fact, a part-time pastor). Even if we were to accept, unequivocally, that the petitioner is a full-time pastor receiving part-time pay, this explanation requires a stipulation that the employer is “unable to support pastors at that minimum salary level.” 8 C.F.R. § 204.5(g)(2) requires that a U.S. employer must be able to pay a given alien the full rate of compensation. Here, implies that cannot afford to pay the petitioner “the minimum salary . . . [of] \$31,483” per year, and therefore classifies the petitioner as “part-time” for bureaucratic reasons, essentially to conceal or justify the substantial underpayment of the petitioner. Thus, if we were to conclude that the petitioner is a full-time pastor paid at a part-time rate, we would also have to conclude that the petitioner is “unable” to pay “the minimum salary,” which in itself would be sufficient grounds for denial of the petition.

As explained above, the petitioner has not offered a credible or consistent accounting of his past work that would show that he worked continuously as a minister throughout the two-year qualifying period, and the explanation for his “PL” designation necessarily presumes inability to pay him the required minimum salary of a full-time local pastor. Therefore, we must find that the petitioner has not persuasively demonstrated that has met, and continues to meet, the various statutory and regulatory requirements necessary to establish eligibility under the classification sought.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.